

Section 40(d)(1) provides that *alcohol* includes methanol and ethanol but does not include (i) any alcohol produced from petroleum, natural gas, or coal (including peat), or (ii) alcohol with a proof of less than 150.

Because the eligible and ineligible alcohol are commingled in X's storage tank, a portion of the alcohol removed from the tank contains both eligible and ineligible alcohol. Therefore, a portion of the commingled alcohol may not be designated as composed *only* of either eligible or ineligible alcohol. Because X cannot determine the actual amounts of eligible and ineligible alcohol contained in the portion removed, these amounts should be determined based on the proportionate volume of each that was placed into the storage tank. Thus, because the eligible and ineligible alcohol were placed into the storage tank at a thirty-seventy ratio, of the 100 gallons of alcohol that X mixes with gasoline for sale for use as a fuel, 30 gallons are eligible for the alcohol mixture credit allowed by § 40(b)(1)(A).

HOLDING

If a taxpayer commingles eligible alcohol with ineligible alcohol and then uses some of the resulting commingled alcohol in a manner that qualifies for the alcohol mixture credit under § 40(b)(1)(A), the amount of alcohol eligible for the credit is determined based on the proportionate amount of eligible alcohol that is contained in the commingled alcohol.

Section 42.—Low-Income Housing Credit

Low-income housing tax credit. An extended low-income commitment satisfies section 42(h)(6) of the Code even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building.

Rev. Rul. 95-49

ISSUE

Does an extended low-income housing commitment satisfy § 42(h)(6) if its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building?

FACTS

The owner (Owner) of a qualified low-income building (as defined in § 42(c)(2) of the Internal Revenue Code) rents the building to a single low-income family (Tenant). In an agreement between the Owner and the Tenant, the Owner grants the Tenant a right of first refusal to purchase the building after the close of the 15-year compliance period (as defined in § 42(i)(1)) at a minimum purchase price as specified in § 42(i)(7)(B). The provisions of the extended low-income housing commitment (Commitment) executed by the Owner with the applicable state housing agency (Agency) are terminated after the compliance period if the right is exercised by the Tenant. The Commitment otherwise meets the requirements of § 42(h)(6).

LAW AND ANALYSIS

Section 42 provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986.

Section 42(h)(6) provides that no tax credit is allowed for a building unless an extended low-income housing commitment between the low-income building owner and the appropriate housing credit agency is in effect at the end of the taxable year. The commitment is binding on all successors to the owner and includes certain provisions that continue after the close of the building's 15-year compliance period. One of the commitment's provisions ensures that a certain percentage of a low-income building's units will continue to be available for rental by low-income tenants after the close of the compliance period.

Section 42(i)(7) provides that no federal income tax benefit fails to be allowable to the owner of a qualified low-income building merely by reason of a right of first refusal held by the building's tenants to purchase the building after the close of the 15-year compliance period. Section 42(i)(7) also continues the availability of low-income housing beyond the compliance period by permitting low-income tenants to be homeowners instead of renters.

The objectives of § 42(h)(6) and (i)(7) are similar in that both sections attempt to promote housing for low-income individuals beyond the compliance period, by rental in the case of § 42(h)(6) or by outright ownership in the case of § 42(i)(7).

Accordingly, under § 42(h)(6) it is appropriate for an owner and a state housing agency to reference a right of first refusal to be granted by the owner to tenants (either initially or by later amendment) in a commitment between the owner and the agency. In this case, the Owner and the Agency have agreed that the provisions of the Commitment will be terminated after the compliance period on the exercise by the Tenant of a right of first refusal. The Commitment nevertheless satisfies § 42(h)(6). The Commitment would likewise have satisfied § 42(h)(6) if it had provided that application of its provisions would be suspended, subject to conditions imposed by the Agency, on the exercise of the Tenant's right of first refusal.

HOLDING

An extended low-income housing commitment satisfies § 42(h)(6) even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through September 1995. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through September 1995.

Rev. Rul. 95-64

In Rev. Rul. 90-60, 1990-2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of "bond factor" amounts for dispositions occurring during each calendar month.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) for dispositions of qualified low-income buildings or interests therein during the period January through September 1995.